

FILED

NOV 18 2013

WA SECRETARY OF STATE

IN THE SUPERIOR COURT OF WASHINGTON
IN AND FOR PIERCE COUNTY

JAMES AND CHERI DEMPSEY

NO.

Plaintiffs,

VERIFIED

vs.

COMPLAINT FOR VIOLATION
OF THE WASHINGTON STATE
CONSUMER PROTECTION ACT,
BREACH OF CONTRACT, AND
NEGLIGENT
MISREPRESENTATION

FLAGSTAR BANK, FEDERAL
NATIONAL MORTGAGE ASSOCIATION,
NORTHWEST TRUSTEE SERVICES

Defendants.

Comes now the Plaintiff JAMES and CHERI DEMPSEY by and through their attorney,
Kathleen Box, and files the within Complaint for violations of the Washington State Consumer
Protection Act, Breach of Contract and Negligent Misrepresentation.

I. PRELIMINARY STATEMENT

1. This is an action by JAMES and CHERI DEMPSEY, ("Plaintiffs") to determine
that the foreclosure sale of the property located at 12320 47TH Ave E, Tacoma, WA 98446 is
wrongful and should not proceed.

2. Plaintiffs are the owners of the residence located at 12320 47TH Ave E, Tacoma,
WA 98446 ("Residence").

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1 3. Defendant Flagstar Bank ("Flagstar") services the mortgage loan secured by the
2 Residence.

3 4. Federal National Mortgage Association ("Fannie Mae") is the owner of the loan
4 serviced by Flagstar securing the Residence.
5

6 5. Northwest Trustee Services ("NWTs") is the foreclosing trustee. As the foreclosing
7 trustee NWTs is a necessary party to this action.

8 6. Plaintiff James Dempsey lost his job in October 2010 which caused the initial
9 hardship leading to Plaintiffs defaulting on their mortgage.
10

11 7. Following Plaintiffs' initial default on their loan Flagstar granted Plaintiffs a
12 unemployment forbearance that lasted six months.

13 8. After the forbearance plan ended Plaintiffs began applying for an Emergency
14 Homeowners' Loan Program (EHLP) bridge loan. Plaintiffs were approved for a bridge loan in
15 in September 2011.
16

17 9. Subsequently the Plaintiffs EHLP bridge loan approval was revoked. Plaintiffs
18 began working towards a modification under the Home Affordable Modification Program
19 (HAMP).

20 10. The Plaintiffs requested a mediation under the Foreclosure Fairness Act 61.24 et al
21 through their housing counselor which did not result in a modification.
22

23 11. In February 2013, Plaintiffs began negotiating directly with Flagstar for a HAMP
24 loan modification.
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1 12. After submitting multiple complete packages and diligently complying with
2 Flagstar's requests for documentation, Plaintiffs were approved for a trial period plan under the
3 HAMP Program.

4 13. The trial period plan offer stated "after all trial period plan payments are timely
5 made and you have submitted all the required documents, your mortgage would then be
6 permanently modified."

7 14. The trial period plan required the plaintiff to pay three trial period plan payments in
8 the amount of \$1276.00 per month. The payments were set for August, September, and October
9 of 2013.

10 15. Plaintiffs made all three trial period plan payments in a timely manner.

11 16. On October 21, 2013, after Plaintiffs successfully made all three trial period plan
12 payments, Plaintiffs called to check on the status of their final modification paperwork. Flagstar
13 informed Plaintiffs to make a fourth payment in the amount of their trial period plan because the
14 final modification was not ready.

15 17. Throughout the trial period plan period, Plaintiffs never received a request for
16 additional documentation from Flagstar.

17 18. After the fourth payment was made, Plaintiffs received a letter from Flagstar
18 denying them a permanent modification. The letter stated that an affordable payment could not
19 be reached based on Plaintiffs' gross monthly income.

20 19. Plaintiffs called Flagstar to question the denial letter they received. Flagstar
21 informed Plaintiffs that the proper documents were not submitted to Fannie Mae and therefore
22 the modification was denied.

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II. CAUSES OF ACTION AGAINST FANNIE MAE AND FLAGSTAR

A. JOINT AND SEVERAL LIABILITY

20. Defendants Fannie Mae and Flagstar are jointly and severally liable for all causes of action in this Complaint.

B. FIRST CLAIM: BREACH OF CONTRACT

21. Flagstar offered Plaintiffs a trial period plan that upon completion should have been converted to a final modification. The language in the trial period plan indicated that upon successful completion of the trial period plan the Plaintiffs would be offered a modification.

22. Flagstar made an offer to enter in to a contract when it offered Plaintiffs a trial period plan; Plaintiffs accepted this offer by submitting timely payments in compliance with the terms of the offer. Flagstar subsequently breached the contract when it wrongfully denied Plaintiffs for a loan modification after Plaintiffs fully complied with the terms of the offer.

23. Flagstar also breached the contract when it accused Plaintiffs of not providing all required documentation in connection with the terms of the offer, when no such documentation was requested.

24. This breach subjected Plaintiffs to damages, including but not limited to, emotional damages connected to the fear of losing their home, monetary damages in terms of the cost to file this lawsuit to enjoin the sale.

C. SECOND CLAIM: UNFAIR AND DECEPTIVE PRACTICES IN VIOLATION OF THE CONSUMER PROTECTION ACT

25. Defendant Flagstar directly and indirectly engaged in unfair and deceptive acts and practices in violation of RCW 19.86.020, including but not limited to:

- a. Making representations to Plaintiffs that they had been offered a trial period plan that would be converted to a permanent modification upon completion of the trial period plan;
- b. After Plaintiffs complied with all terms of the offer, Defendants refused to permanently modify Plaintiffs' loan;
- c. Justifying the denial of a permanent modification by accusing Plaintiffs of not providing all required documentation, when no additional documentation was requested.

26. The actions of Defendants as alleged herein constitute violations of the Washington Consumer Protection Act, RCW 19.86.020, and: (1) have occurred in trade or commerce; (2) are unfair or deceptive as alleged above; (3) negatively affect the public including thousands of Washington residents against whom Defendants seeks to illegally foreclose; and (4) causing injuries to Plaintiffs as alleged above.

D. THIRD CLAIM: NEGLIGENT MISREPRESENTATION

27. Under the circumstances alleged, Defendants owed Plaintiffs a duty to provide them with accurate information regarding the loan modification process and to comply with the representations made by the Defendant in its trial period plan.

28. Defendants negligently represented to Plaintiffs that upon completion of their trial period plan, they would be offered a permanent loan modification. Flagstar representation was negligent as it subsequently refused to honor its offer of a modification, by refusing to permanently modify Plaintiffs' loan after Plaintiffs' complied with all terms of the trial period plan.

29. Supplying such obviously false information demonstrates a lack of exercise of reasonable care or competence in communicating with Plaintiffs.

30. Plaintiffs justifiably relied on Defendants' misrepresentations expecting to be entitled to make payments on their trial period plan and be offered a permanent modification.

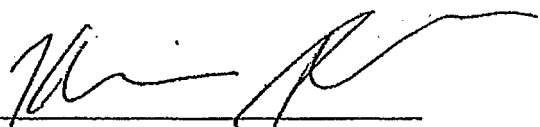
31. Plaintiffs have suffered significant damages as a result of Defendants negligence including but not limited to, the potential of losing their home, emotional damages and monetary damages connected with filing this lawsuit.

III. REQUEST FOR RELIEF

Having stated their allegations and claims, Plaintiffs request the following relief:

1. General damages in an amount to be determined at trial;
2. Treble damages for each and every violation of the Consumer Protection Act, plus attorney fees and costs;
3. Damages including emotional distress, for the conduct of the Defendants in an amount to be fully proven at the time of trial;
4. Injunctive relief prohibiting the foreclosure of Plaintiffs' Residence by any entity or person until further order of this Court;
5. The value of lost use of Plaintiffs monies, past and future, according to proof at time of trial;
6. For such other relief as the Court deems equitable and just.

DATED this 1st day of November, 2013.


Kathleen S Box, WSBA #45254
Attorney for Plaintiffs

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VERIFICATION

STATE OF WASHINGTON)

COUNTY OF KING)

):ss.

JAMES DEMPSEY duly sworn upon oath, deposes and states that he has read the foregoing,
that he knows the contents thereof, believes the same to be true to the best of his information and belief.

[Signature]

SUBSCRIBED AND SWORN to before me this 1st day of November,, 2013.



[Signature]

Type or print name: Rita R. Demers

NOTARY PUBLIC in and for the State of Washington

residing at Seattle

My Commission Expires: 2/1/17

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VERIFICATION

STATE OF WASHINGTON)

) :ss.

COUNTY OF KING)

CHERI DEMPSEY, duly sworn upon oath, deposes and states that she has read the foregoing, that she knows the contents thereof, believes the same to be true to the best of her information and belief.

Cheri M Dempsey

SUBSCRIBED AND SWORN to before me this 1st day of November, 2013.



Rita R. Demers

Type or print name: Rita R. Demers

NOTARY PUBLIC in and for the State of Washington

residing at Seattle

My Commission Expires: 2/4/17

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